



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 9, 2018

Via ECF

The Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

**Re: United States v. Fredy Renan Najera Montoya,
S1 15 Cr. 378 (PGG)**

Dear Judge Gardephe:

The Government respectfully submits this letter to clarify the status of discovery and pretrial disclosures.

On September 19, 2018, the Government made available to the defense draft transcriptions and translations of previously produced consensually monitored Spanish-language communications. Many of the recordings are videos of meetings with individuals the defendant has met previously. The Government currently intends to offer in its case-in-chief two of the videos. Draft transcripts relating to those videos were included in the September 19 production, and both drafts contained attributions that identified the participants in the meeting at issue. The Government also intends to offer in its case-in-chief two sets of electronic communications sent via BlackBerry Messenger and consisting of a total of 10 pages, which were obtained at the direction of the DEA by cooperating witness Devis Leonel Rivera Maradiaga using the screenname "Tdg." The copy of one set of the communications produced to the defendant on July 27, 2018 contained a handwritten annotation by Rivera Maradiaga indicating that the communications were exchanged with a now-deceased drug trafficker known as Danilo Pena, who used the screenname "El pelon." The second set of electronic communications is between the same two screen names. The Government will address the admissibility of these materials and any evidence to be offered pursuant to Rule 404(b) in its motions *in limine*, which will be filed next Friday pursuant to a modified schedule set by the Court with the consent of defense counsel.

During a telephone call yesterday afternoon, the Government informed defense counsel that the Government is prepared to continue its production of Jencks Act and *Giglio* material with respect to Devis Leonel Rivera Maradiaga,¹ and commence production with respect

¹ As explained previously, Rivera Maradiaga testified at a *Fatico* hearing in *United States v. Fabio Porfirio Lobo*, No. 15 Cr. 174 (LGS), and, as a result, a significant volume of *Giglio* material relating to Rivera Maradiaga has been publicly available since the defendant's arrival in the District. (See Dkt. No. 38 at 11).

to other witnesses, subject to reaching agreement on certain issues including a protective order restricting dissemination of the materials. Defense counsel informed the Government that he would consider the proposal and respond next week.

During the same phone call yesterday afternoon, the Government informed defense counsel that it intended to supplement its expert disclosure today. This morning, the Government sent counsel the enclosed supplemental expert disclosure relating to the four expert witnesses that the Government expects to call in its case-in-chief.

As a result of the foregoing, the Government remains in compliance with its discovery obligations. The Government is mindful of those obligations, including with respect to *Brady* and *Giglio*, and will continue to remain in compliance with those obligations during the entirety of these proceedings.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

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Enclosure

Cc: Victor Rocha, Esq.
(Via ECF)